

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Derek Clements, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Civil Action Number: 2:22-cv-02069-RMG
	)	
Lloyd J. Austin, III, Secretary of	)	
Defense,	)	
	)	
Defendant.	)	

**DEFENDANT’S CONSENT MOTION FOR AN EXTENTION OF TIME  
TO RESPOND TO THE AMENDED COMPLAINT**

Defendant respectfully requests that the Court extend the deadline for a response to Plaintiffs’ amended complaint, ECF No. 33, for 14 days. In the alternative, Defendant requests that the Court issue an order staying Defendant’s obligation to respond to the amended complaint until 14 days after either Plaintiffs file their second amended complaint, per Federal Rule of Civil Procedure 15(a)(3), or Plaintiffs retract their intent to seek leave to amend their complaint. The current deadline for Defendant to respond to Plaintiffs’ current amended complaint is March 21, 2023. ECF No. 46. Pursuant to Local Rule 7.02, counsel for Defendant conferred with counsel for Plaintiffs, who indicated that Plaintiffs consent to Defendant’s request to extend the deadline for a response to Plaintiffs’ amended complaint for 14 days. Good cause exists to grant this motion, as set forth below.

1. On August 15, 2022, Plaintiffs filed an amended complaint. ECF No. 33.
2. That same day, Plaintiffs filed a renewed motion for a temporary restraining order and preliminary injunction. ECF No. 34. Defendant filed a brief in opposition to Plaintiffs’ motion on August 24, 2022. ECF No. 41. Plaintiffs filed a reply in support of their motion on August 31, 2022. ECF No. 45.

3. On August 26, 2022, Defendant filed a motion seeking to extend the deadline for responding to Plaintiffs' amended complaint until 14 days after any order resolving Plaintiffs' then-pending motion for a preliminary injunction. ECF No. 42. Plaintiffs opposed. ECF No. 44. On September 1, 2022, the Court granted Defendant's motion and directed Defendant "to file a response to the Amended Complaint no later than fourteen days after any order resolving Plaintiffs' motion for a preliminary injunction." ECF No. 46.

4. On March 7, 2023, this Court entered an order denying Plaintiffs' motion for a preliminary injunction as moot. ECF No. 57. That order also stated: "If Plaintiffs seek to assert new claims and/or prayers for relief beyond those previously pled, they need to move to amend their complaint and clearly set forth any new claims and the relief they seek to assert." *Id.* at 2.

5. Per this Court's order, Defendant's response to Plaintiffs' amended complaint is currently due on March 21, 2023. ECF No. 46.

6. On March 13, 2023, counsel for Defendant contacted counsel for Plaintiffs to determine whether Plaintiffs intended to seek leave to file a second amended complaint. On March 15, 2023, counsel for Defendant requested Plaintiffs' position on Defendant's instant motion to extend the deadline for Defendant's response to the amended complaint an additional 14 days—through April 4, 2023—in order to allow Plaintiffs time to file a motion seeking leave to amend the complaint again. Counsel for Plaintiffs responded on March 15, 2023, indicating that Plaintiffs intend to seek leave to file a second amended complaint and consenting to Defendant's request to extend the deadline for a response to Plaintiffs' amended complaint for 14 days.

7. An adjustment to Defendant's response period is warranted given the current posture of this case. Plaintiffs have indicated an intent to seek leave to file a second amended complaint, which would render moot any response filed prior to such motion. It would not be an efficient use of party or Court resources for Defendant to file a response to Plaintiffs' current amended complaint before Plaintiff files a motion seeking leave to amend that complaint.

8. As noted, *see supra* ¶ 3, this is the second extension that Defendant has sought with respect to the deadline to respond to Plaintiffs' amended complaint. The requested extension will not affect any other deadlines.

For the foregoing reasons, Defendant respectfully submits that an order permitting Defendant an additional 14 days to respond to the amended complaint would promote the efficient resolution of this matter. Defendant therefore requests that the Court issue an order lifting Defendant's obligation to respond to the amended complaint by March 21 and extending the response deadline to April 4. In the alternative, Defendant requests that the Court issue an order staying Defendant's obligation to respond to the amended complaint until 14 days after either Plaintiffs file their second amended complaint, per Federal Rule of Civil Procedure 15(a)(3), or Plaintiffs retract their intent to seek leave to amend their complaint.

Dated: March 16, 2023

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Respectfully submitted,

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